File No. 535 of 1931.

Collection No.

19

Pg. 9

Resident's Office,

Bangalore.

Pros. Serial Nos. 1---4.

Subject.

Question as to whether Director's Fees come under the head 'Salaries' or 'Other Sources for the purpose of assessment of Income-tax according to new rates.

Previous References.	Later References.
151/1930.	

(M.1037)—19-12-32—60,000.

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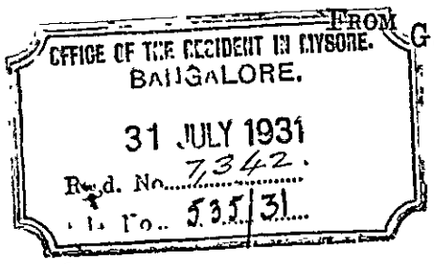
30/10

CORRESPONDENCE.

No. S/689.

Office of the
Collector and Assistant Commissioner of Income-tax,
Civil and Military Station, Bangalore,

Dated the 29th July 1931



From G. H. Cooke, Esq., M.C., I.C.S.,
Collector and Asst. Commr. of Income-Tax,
Civil and Military Station,
Bangalore.

CVA 13/8/31

To

The Commissioner of Incometax,
Civil and Military Station, Bangalore.

~~Subject~~

Sir,

I have the honour to state that under the Government of India Finance Department (Central Board) Incometax Notification No. 11 dated 4th April 1931, the assessments for the year 1931-32 in respect of salary and interest on securities received in 1930-31 have alone to be made at the old rates viz., the rates sanctioned by the Finance Act of 1930. In the case of Mr. W.R. Prosser who is an employee and a Director of the United Breweries, his "Director's fees" was treated as income under the head "Other sources" and assessed accordingly at the new rates vide correspondence that took place between this office and the assessee, copy enclosed. As the assessee has however raised an objection to the "Director's fees" being assessed at the new rates I request to be favoured with your opinion as to whether the "Director's fees" should in the circumstances stated in the correspondence, be treated as income under the head "salary" and assessed at the old rate or taken as income under the head "Other sources" and assessed at the new rate.

I have the honour to be,
Sir,
Your most obedient servant,

30.7.31

Collector & Asst. Commr. of I.Tax.

SM.

Copy of the letter dated 12th June 1931 from Mr. W.R. Prosser, The Brewery, Bangalore, to the Incometax Officer, C & M Station, Bangalore.

I return herewith your assessment of my income for 1931-32 as I think there must be some mistake in connection with the Rs. 2,000/- I received as Director's fees during 1931-32.

The rate applicable should be 16 pies, the same as for the remainder of my income, as the Rs. 2,000/- was actually received during last fiscal year.

Letter No. F/699 dated 13th June 1931 from the Incometax Officer, C & M Station, Bangalore to Mr. W. R. Prosser, United Brewery, Bangalore.

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with part up

According to the Finance Act of 1931 the rate applicable to total income exceeding 30,000/- is 23 pies per rupee. The Governor General however has notified that the increased rates will not apply to income from (1) Salary, (2) Dividends and (3) Government Securities, received in the year 1930-31. As Director's fees is not income from "Salary" the increased rates Viz. 23 pies would apply to that item. The assessment already made is therefore correct.

The Demand-notice and Challan are returned herewith.

Letter dated 30th June 1931, from Mr. W.R. Prosser, The Brewery, Bangalore, to the Incometax Officer, C & M Stn, Bangalore.

Your S/699 of 15th June - Incometax assessment - 1931-32.

Whilst in agreement with your ruling in general I cannot agree that Director's fees are not income from "Salary".

The Incometax Act defines Salaries as follows:-

"The tax shall be payable by an assessee under the head "Salaries" in respect of any salary or wages, any annuity, pension or gratuity and any fees -- commissions, perquisites or profits received by him"

As far as I am aware nothing is said in the Act to differentiate Director's fees from this head, it seems to me such fees are simply in the form of a salary paid to Directors for services rendered: and as such should be taxed

at 16 pies and not 23 pies.

Should thank you for your reconsideration on this point.

Letter No. F/699 dated 3rd July 1931, from the Incometax Officer, C & M Station, Bangalore to Mr. W. R. Prosser, United Brewery, Bangalore.

Kindly let me know whether you are an Ex-Officio or elected Director of the Company.

Letter dated 8th July 1931 from Mr. W. R. Prosser, The B Brewery, Bangalore, to the Incometax Officer, C & M Station, Bangalore.

Your S/699 dated 3rd July 1931.

My position as Director of the Brewery Company is that I was elected in the ordinary way, but when I became General Manager I did not have to seek re-election in rotation: this however is not to say that the position as General Manager is also an Ex-officio Directorship, as my successor might not be on the Board at all.

Letter No. E/699 dated 15th July 1931, from the Incometax Officer, C & M Station, Bangalore, to Mr. W. R. Prosser, The United Breweries, Bangalore.

As pointed out by you in your letter dated the 30th June 1931, the head "Salary" no doubt includes fees as well. But there is difference between fees received by an employee and the fees received by Directors. For example, in the case of a Doctor who is in charge of a hospital, the fees received from in-patients will form part of his salary - because he x receives it by virtue of his office as the Medical Officer in charge of the hospital - while fees received from private practice will be treated as income from "Other Sources". Similarly commission paid to an employee of a company will be treated as forming part of the salary - because he gets it by virtue of his office as an employee of the company - while commission paid to an outsider will be treated in his hands as income from "Business". In your case, if you had received the Director's fees as an ex-officio Director i.e. by virtue

of the appointment held as an employee of the Company, it would be a different matter, but as you have stated in your letter dated 8th July 1931 you received the Director's fees not in the capacity of an ex-officio Director but as an ordinary Director. I may also point out that while the attendance at the office is compulsory in the case of an employee the attendance at a meeting of the Directors is optional. It is obvious, therefore, that there is difference between an employee and a Director. Hence the fees received by any Director other than an ex-officio Director cannot be treated as income under the head "Salary"

The Demand Notice and Chalans are returned herewith.

Letter dated 22nd July 1931, from Mr. W. R. Prosser, The Brewery, Bangalore, to the Incometax Officer, Bangalore

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Incometax on Director's fees.

I am obliged for your courteous and interesting letter on this point, but I am still unable to agree with your point of view.

In the Incometax act Section 7 it is distinctly laid down-

"The tax shall be payable by an assessee under the head "Salaries" in respect of any salary or wages, any annuity pension or gratuity and any fees commissions, perquisites or profits received by him".

I cannot see that any difference is made or implied between Directors fees and other fees or salary.

The example you quote of a Medical Officer is somewhat similar to my own case as Directors fees are received from the same Company as my salary, and are sanctioned by shareholders so am in same position as the Medical Officer in respect of his "in patients".

I think you are in error in stating that attendence at Directors meetings is optional, for non attendence at a Board Meeting has to be explained in precisely the same way as an employee's absence from office, furthermore a Director can be removed from the Board of a Company for non

attendence just as an employee may be dismissed for frequent absence from office.

Whilst appreciating your views up to a point I still contend that my Director's fees should only be taxed at same rate as other salary i.e., 16 pies not 23 pies and would suggest that a decision between us is obtained either by an arbritration or ruling of Collector.

Letter No. F/699 dated 24th July 1931, from the Assistant Commissioner of Incometax, Bangalore, to Mr. W. R. Prosser, The Brewery, Bangalore.

With reference to your letter dated the 22nd July 1931 to the Incometax Officer, C & M Station, I regret to state that I am debarred from reconsidering the matter at this stage, long after the assessment was made. The only remedy lies in filing an appeal to the Commissioner of Incometax, Bangalore, against the assessment, if you are really dissatisfied with it.

I may, however, point out that nothing will be gained thereby as the Director's fees will have to be assessed at the enhanced rates, if not this year at least next year. To be more clear, though the old rates of Incometax apply to income assessable in 1931-32 under the heads (a) Salary, (b) Interest on Securities and (c) Dividends from Companies, the new rates ought to be applied in deducting Incometax in the current year from the afore-said items of income. You will thus see that if the Director's fees are assessed this year at 23 pies in the rupee they will not be assessed next year at the same rate, while they will be assessable next year at 23 pies in the rupee in case they are assessed at 19 pies this year.

SM.

29.7.31. Collector and 30.7.31. Assistant Commr. of Incometax

DRAFT.

No 6595-Enq. 11th Sept. 1931.

From

The Resident
Secretary and Commissioner of
Income-tax.

To

The Commissioner of Income-tax,
Madras.

Sir,

I have the honour to enclose a copy of a letter from the Assistant Commissioner of Income-tax, C. and M. Station, Bangalore, No.S/689, dated the 29th July 1931 (with enclosures) regarding the assessment of a Director of a Company in Bangalore, and to request that, if there be no objection, I may be favoured with your views in the matter.

I have etc.,

Secretary to the Resident and
Commissioner of Income-tax.

27.8.31

3

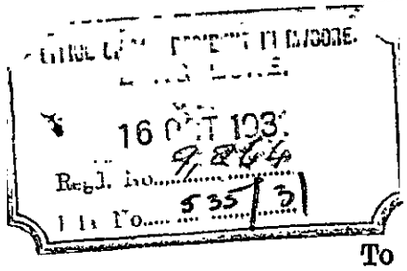
Telephone No. 3488.
Tel. Address—" INTAX ".

Office of the
Commissioner of Income-tax,
Old High Court Buildings, Madras.

No.565/31.

Dated the 14th October 193 1.

FROM



F. H. SPENCK ESQ., I.C.S.,

COMMISSIONER OF INCOME-TAX, MADRAS,

To

The Secretary to the Resident in Mysore, and
Commissioner of Incometax,
Civil & Military Station, Bangalore.

SIR,

S.N.L. (D)

Director's fees - Whether "salary" or "other sources" - Your letter No.6598/31, dated the 11the September, 1931.

Whether fees paid to a Director come under the head-"Salaries" described in Section 7 must depend, I think, on the facts of the particular case, and no general rule can be laid down. I should point out, however, that the fees referred to in that section as constituting -- salary are those received "in lieu of, or in addition to any salary or wages".

Accordingly the practice here seems to be, where the Director is a salaried employee of the Company, to treat his fees as an addition to salary and therefore taxable under section 7. In other cases the fees are regarded as income from "Other Sources" taxable under section 12. Personally I doubt the validity of this distinction. It would perhaps be more accurate to say that these fees are only salary when the directorship is compulsory, i.e., when it is imposed on the employee as one of the terms of his employment.

I have the honour to be,
Sir,
Your most obedient servant,

15208

For COMMISSIONER.

JJ 15/10.

4

M.7855 Sec 1 29th Oct 1931

From

The Secy. to the Resident and
Commr. of Income-tax.

To

The Collector and Assistant Commr. of
Income-tax,
C. & M. Station, Bangalore.

Sir,

S.N.1 (C)

With reference to your letter No.S/689 dated the 29th July, 1931, enquiring whether fees paid to a Director of a Company come under the head 'Salaries' described in Sec.7 of the Indian Income-tax Act, I have the honour to say that a reference was made to the Commissioner of Income-tax, Madras, in order to ascertain the procedure followed in the Madras Presidency in cases of the kind. I enclose for your information, a copy of his letter No.565/31, dated the 14th October, 1931, and would suggest that action may be taken in accordance with the views expressed by him.

S.N.2 (D)

x S.N.3 Encl

I have, etc.,

Secy. to the Resident and
Commr. of Income-tax.

19-10-31

FINANCE DEPARTMENT (CENTRAL REVENUES)

NOTIFICATION.

INCOME-TAX.

New Delhi, the 4th April 1931.

No. 11.—In exercise of the powers conferred by section 60 of the Indian Income-tax Act, 1922 (XI of 1922), hereinafter referred to as the said Act, the Governor General in Council is pleased to direct as follows:—

(a) For the purposes of any assessment to be made for the year ending the 31st March 1932, the rate of income-tax applicable to such part of the total income of an assessee as is derived from salaries or from interest on securities shall be the rate specified in the Indian Finance Act, 1930 (XV of 1930), as applicable to a total income equal to that of the assessee;

(b) For the purposes of refunds under sub-section (1) or sub-section (3) of section 48 of the said Act in respect of dividends declared during the year ending the 31st March 1931 or of payments made during the said year of interest on securities or salary, the rate applicable to the total income of the person claiming refund shall be the rate specified in the Indian Finance Act, 1930 (XV of 1930), as applicable to a total income of the same amount.

A. H. LLOYD,
Joint Secy. to the Govt. of India.

No. 11—C. No. 135-I. T./31.

Copy forwarded to all Commissioners of Income-tax, Chambers of Commerce and the High Commissioner for India.

By order, etc.,

21.4.31

for Dy. Secy. to the Govt. of India.

GIPD—9 CBR—16-4-31—315.